

**Testimony of
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on behalf of the
State and Territorial Air Pollution Program Administrators
and the
Association of Local Air Pollution Control Officials
on the Clean Air Act Transportation Conformity Provisions of H.R. 3
before the
House Energy and Commerce Subcommittee on Energy and Air Quality

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Good afternoon, Mr. Chairman and members of the Subcommittee. I am Annette Liebe, Manager of the Air Quality Planning Section of the Oregon Department of Environmental Quality. I am testifying today on behalf of STAPPA – the State and Territorial Air Pollution Program Administrators – and ALAPCO – the Association of Local Air Pollution Control Officials – the two national associations of air quality officials in 53 states and territories and over 165 major metropolitan areas. The members of STAPPA and ALAPCO have primary responsibility under the Clean Air Act for implementing our nation’s air pollution control laws and regulations and, moreover, for achieving and sustaining clean, healthful air for our citizens. Accordingly, we are pleased to have this opportunity to provide our perspectives on (1) the proposed changes to the Clean Air Act’s transportation conformity provisions contained in H.R. 3, the “Transportation Equity Act: A Legacy for Users,” and (2) the Congestion Mitigation and Air Quality Improvement (CMAQ) program under this legislation.

STAPPA and ALAPCO are acutely aware of the key role that transportation plays in our nation’s economy. We endorse the fundamental principle that transportation and

environmental goals need not be at odds with one another, but, rather, that our transportation system can flourish and our economy can grow without jeopardizing the health of our citizens and the environment. In fact, our transportation choices can make important contributions to health and environmental improvements.

Today, however, transportation remains a dominant source of air pollution across the country, contributing substantially to unhealthful levels of ozone, particulate matter (PM) and carbon monoxide (CO). In particular, according to the U.S. Environmental Protection Agency (EPA), these sources are responsible for over 40 percent of volatile organic compounds and more than 50 percent of nitrogen oxides – both of which are ozone precursors – and about a third of fine particulate matter emissions and 70 percent of CO emissions. Transportation sources are also very significant contributors of greenhouse gases – including over a third of carbon dioxide emissions – and toxic air pollutants, and play a role in the formation of regional haze. Although EPA’s standards for light-duty and heavy-duty vehicles will contribute to making great progress in reducing emissions from mobile sources, it is clear that the benefits of these technological advances can not keep pace with current and foreseeable trends of steadily increasing vehicle miles traveled (VMT).

New research linking vehicle emissions to serious and adverse health effects on children and other sensitive populations further supports the need for effective transportation conformity and CMAQ programs. This research shows that:

- 1) children attending schools located adjacent to freeways suffer an increased prevalence of asthma and bronchitis;
- 2) children exposed to higher levels of motor vehicle-related pollutants experience a permanent, life-long reduction in lung function compared to children living in cleaner air; and
- 3) children who die of cancer before age 16 were far more likely to have been exposed to vehicle pollution as a fetus because the mother resided within 1 kilometer of a highway during and after pregnancy.

STAPPA and ALAPCO firmly believe that the transportation conformity and CMAQ programs are critically important to achieving full integration of our environmental and transportation decision-making processes and ensuring that transportation choices do not undermine our efforts to sustain clean, healthful air throughout the country. Air pollution control is a zero-sum calculation. To the extent we are not able to achieve the appropriate cost-effective emissions reductions from transportation sources, we will have to resort to more costly alternative control measures from some other industrial sources, including small businesses.

Our associations have adopted a set of transportation conformity and CMAQ principles for the reauthorization of transportation legislation and prepared a comparison of the air quality provisions of proposed House and Senate legislation from last Congress. Both are attached to this testimony.

Transportation Conformity

STAPPA and ALAPCO remain firmly committed to the purpose of transportation conformity, which is to ensure that shorter-term Transportation Improvement Programs (TIPs) and long-term Regional Transportation Plans (RTPs) contribute to the timely attainment and maintenance of healthful air quality and achieve the motor vehicle emissions budgets contained in State Implementation Plans (SIP) for air quality. We believe that conformity can continue to be implemented as currently written and intended.

In numerous areas, the conformity process has facilitated good working relationships between state and local air quality and transportation officials by requiring consultation and coordination among agencies. The process has made air quality and transportation planners more aware of each others' objectives; resulted in the inclusion in TIPs and RTPs of additional projects that benefit air quality; and opened up the SIP development process to more input from the transportation community. Clearly, this has been the case in Oregon. STAPPA and ALAPCO believe that we must continue to strive for such successes across the country. Moreover, our associations strongly believe that the purpose of conformity – to ensure that transportation plans and programs support healthful air quality – is fundamental to the goal of achieving clean air, especially given the continued increase in motor vehicle use and transportation's contribution to poor air quality in many areas throughout the country.

STAPPA and ALAPCO believe that the Clean Air Act's transportation conformity program is working and strongly endorse preserving the major requirements and schedules that are now in place. However, we are troubled that proposed changes to

transportation conformity in recent Senate and House legislation, including H.R. 3, could seriously weaken the program and undermine the ability of states and localities to attain and maintain national ambient air quality standards. We believe, however, the most problematic provisions are included in the Senate bill, and strongly urge the House to reject them. Our major concerns with the proposed bills follow.

First, our associations are extremely concerned that both Senate and House proposals seek to shorten the period of emissions analysis used to determine whether a long-range plan conforms to the SIP. Under each proposal, the plan's conformity determination would be based on a 10-year horizon, rather than the current 20-year horizon. We strongly oppose such a change, but believe the House provision is less problematic to the conformity program than the Senate proposal.

Long-term planning, over a 20-year horizon, is imperative to ensuring that the potential growth in mobile source emissions is identified, the impact on air quality is assessed and, where necessary, adjustments are made. In planning for clean air, state and local air agencies must not only chart a course for achieving healthful air quality, but also for maintaining it over the long term. Shortening the timeframe over which a transportation plan is required to demonstrate conformity is extremely troubling to us because it takes only the first part of our responsibility – *attaining* an air quality standard – into account, and disregards our responsibility for *maintaining* clean air over the subsequent 20 years.

Major transportation projects can have huge air quality impacts, much of which may not occur during the first ten years when the new highway has not yet been filled to capacity. The greatest emissions impact of a new highway often occurs after the first ten years when the resulting development corridor is fully developed and the facility is again jammed with stop-and-go traffic. If we eliminate the responsibility to account for the impact of transportation investments beyond 10 years, then we lose the opportunity to hold these projects accountable for their long-term contribution to air pollution, and severely compromise our ability to adequately protect public health.

Accordingly, STAPPA and ALAPCO strongly oppose the Senate provisions mandating a shorter planning horizon of 10 years, with no flexibility to account for local needs. While we are also disappointed that the House bill allows the conformity decision to be based on 10 years, we still find it preferable, since it does not mandate a shorter planning horizon, but instead allows conformity to be based on emissions during the first ten years *only* with the agreement of the air pollution control agency. We also support the provision in the House bill requiring an emissions analysis for the additional years in the transportation plan even if the emissions in the out-years are not used for conformity purposes. This will alert the transportation and air quality planners to possible future air quality problems and provide an opportunity to address them during the period of the next update of a transportation plan before the future conformity violations cause a conformity lapse.

Second, STAPPA and ALAPCO are also concerned with proposals reducing the frequency of conformity determinations for transportation plans from every three years to

every four years, and eliminating the requirement for conformity determinations on the TIP, currently conducted every two years. Our associations oppose these changes, but believe they will have much less impact on the conformity process if the House language regarding long-term emissions analyses is adopted.

Third, we believe that regular and timely analyses must be maintained to demonstrate compliance of financially constrained TIPs and RTPs with SIP motor vehicle emission budgets. Such continued frequency will ensure that sound data are generated and allow for the timely adjustment of motor vehicle emissions estimates. The longer the delay between emissions estimates, the longer emissions can grow in excess of the emissions budgets planned for in the SIP to attain and maintain the standards. If a violation of SIP budgets grows too large before it is discovered, it not only will prevent attainment of the health-based air quality standards, but may also become too difficult to correct through the transportation process within a reasonable period of time. This may result in emission increases that cannot be offset by transportation control strategies in time to meet the statutory deadlines for reasonable progress or attainment of the health-based standards. In those situations, the failure of conformity will likely force additional emissions reductions from stationary sources to achieve the overall reductions required for attainment.

In recognition of the desire of transportation officials to improve the alignment of conformity timelines, STAPPA and ALAPCO recommend that the frequency of the conformity analysis on the TIP and the RTP be synchronized. The House bill requires synchronized determinations. The Senate bill does not.

Fourth, we are concerned with provisions of the Senate and House bills allowing projects to be funded during a conformity lapse. The current conformity program does not restrict project funding during a lapse for projects that reduce emissions or do not increase emissions. Both the Senate and House bills expand these exemptions considerably. The Senate bill allows all but the largest “regionally significant projects” to continue to be funded for an indefinite period during a conformity lapse, and does not require that emissions be reduced to comply with the SIP. The House bill allows all projects, including “regionally significant projects,” to continue to be funded during a conformity lapse, but limits the time period when projects may be funded to 12 months, and requires transportation agencies to revise their plans and take corrective actions to conform to the SIP budgets.

STAPPA and ALAPCO oppose expanding the current list of exemptions to include projects that increase emissions. We believe this will exacerbate the exceedance of SIP emissions budgets and make corrective action more difficult and expensive. However, of the two proposals, we prefer the provision in H.R. 3, since it limits the time period and requires corrective actions.

Fifth, STAPPA and ALAPCO strongly oppose the provision in the Senate bill that eliminates emissions budgets in currently approved ozone SIPs until new plans for the 8-hour ozone standard are submitted. EPA has already rejected this concept, concluding that if the current SIP budgets were set aside – as the Senate bill allows – ozone-forming emissions from motor vehicles in major metropolitan areas could increase significantly.

According to EPA in its latest conformity rulemaking (69 Fed Reg, pp 40026-27, July 1, 2004), vehicle emissions:

could increase anywhere from 10 to 50% of the 1-hour budgets, and because motor vehicles represent a quarter to a half of all emissions in most metropolitan areas, the total emissions in an airshed could increase to the point where areas cannot attain the 8-hour standard.

We are concerned that this provision could seriously impair the ability of states and localities to attain and maintain the 8-hour ozone standard. Consequently, we support the House on this issue and strongly recommend that you reject the Senate language.

Finally, we are concerned that the Senate and House bills contain language that conflicts with the Clean Air Act by potentially allowing non-conforming projects in PM₁₀ and PM_{2.5} nonattainment areas to be included in the TIP. The Clean Air Act requires that no project cause or contribute to a violation of national ambient air quality standards. The Act also requires that projects come from transportation plans and improvement programs that do not cause violations of the NAAQS. But the language in both bills would allow a transportation improvement program (TIP) to be approved even if it includes projects that cause violations of the PM₁₀ and PM_{2.5} standards. It appears that this language has simply been carried forward from the 1998 law without addressing the conflict with the Clean Air Act. To avoid confusion and possibly conflicting interpretations of the provisions with the Clean Air Act, the language needs to be removed from the bills.

As we mentioned, our associations believe transportation conformity is working. We believe it is well worth the effort it requires, given the benefits that will follow in

terms of public health and implementation of smart-growth policies. In addition, we believe that conformity as it is currently structured provides ample flexibility to states and localities to accommodate individual needs and circumstances, while maintaining the integrity of the program. Rather than statutory changes to such elements as planning horizons, analysis frequency and grace periods, STAPPA and ALAPCO believe that state and local officials should retain the flexibility to resolve issues in the way that works best at the state and local level. This may involve revising the emissions budget in a SIP in one area, adding transportation control measures to a TIP in another area or extending the air quality planning horizon in yet another area. In each case, the state and local officials can develop the best solutions for their jurisdictions through a strengthened interagency consultation process.

Congestion Mitigation and Air Quality Improvement (CMAQ) Program

STAPPA and ALAPCO strongly support the CMAQ program, which provides a discrete source of funding set aside for transportation projects that meet air quality objectives and for projects that result in sustainable air quality improvement. The CMAQ program appropriately reinforces the interrelationship between the transportation and air quality planning processes by specifically recognizing and funding projects designed to reduce the transportation sector's impact on air quality. Over the past 10 years, states and localities have demonstrated that CMAQ can play a significant role in addressing transportation-related air quality problems. We believe, however, that this important program can be strengthened in several ways.

First, since CMAQ was originally established, understanding of the scope and magnitude of transportation-related emissions and their impact on air quality has expanded significantly. EPA has adopted new, health-based National Ambient Air Quality Standards (NAAQS) for fine particulate matter and 8-hour ozone, and states are now beginning to prepare State Implementation Plans to demonstrate attainment of these standards. A National-Scale Air Toxics Assessment concluded that motor vehicles are the largest source of hazardous air pollutants nationwide, producing nearly 1.4 million tons of air toxics each year.

While STAPPA and ALAPCO believe CMAQ funds should be apportioned based on the severity of an area's air quality problem, we urge that the areas eligible to receive CMAQ funding be expanded from 1-hour ozone, PM₁₀ and CO nonattainment and maintenance areas, to also include PM_{2.5} and 8-hour ozone nonattainment and maintenance areas; areas nearing nonattainment; areas whose transportation-related emissions have an impact on a nonattainment area; and areas that experience other air quality problems as a result of transportation-related emissions, including, but not limited to, hazardous air pollutants from mobile sources.

Accordingly, we believe that the historic allocation of CMAQ funds is inadequate. We strongly urge a substantially increased federal commitment of resources to the CMAQ program, to reflect the true and very significant impact of transportation-related emissions on air quality. This increase should be no less, proportionately, than that to be provided for other highway investments.

In Oregon, CMAQ funds have been used to implement transportation control measure commitments in numerous maintenance plans. Some examples include expansion of transit service and programs, support of transit-oriented development, implementation of commuter trip-reduction programs, expansion of bicycle and pedestrian facilities and the purchase of advanced equipment to remove winter road sand that could contribute to PM₁₀. In order to meet the challenges of implementing new standards to protect public health, we believe funding should increase for these types of projects and be available for areas committed to making progress to maintain healthful air.

With respect to project eligibility, we urge that greater emphasis be placed on projects that will result in direct, timely and sustained air quality benefits. Certain types of congestion mitigation projects, such as road and bridge construction and expansion, may have the long-term effect of promoting growth in VMT and urban sprawl, and of creating new congested corridors. We also recommend that to qualify for CMAQ funds, a project should be required to demonstrate that a minimum air quality benefit threshold is met or exceeded, based on established criteria and supporting data, and with the concurrence of the appropriate state and/or local air quality agency. This concurrence should occur through a well-defined consultation and concurrence process. In Oregon, the Department of Environmental Quality has participated in selecting CMAQ projects through the ongoing interagency consultation process that we established under our conformity rules.

Conclusion

In its policy on transportation and air quality, the National Governors' Association states:

With the enactment of the Clean Air Act Amendments of 1990, the Intermodal Surface Transportation Efficiency Act of 1991, and the Transportation Equity Act for the 21st Century, Congress took steps to advance two essential national goals: achieving air quality standards and providing for the transportation needs of the American people. The Governors strongly support the attainment of both of these goals and believe that neither should be sacrificed in pursuit of the other.

STAPPA and ALAPCO embrace this perspective, as well. We look forward to working with members of this Subcommittee as discussions regarding transportation conformity and CMAQ continue.

Thank you for this opportunity to testify.